

JPA File No.: 07-061-I
AG Contract No.: P001-2007-002601
Project: 63rd Ave, Olive to Grand Ave
TRACS No.: SS 59201C
Budget Source Item No.: N/A



INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into this date November 20, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE, acting by and through its Mayor and City Council (the "City"). The State and the City are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project lies within the boundary of the City and has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
5. The City, in order to obtain Federal funds for the construction of the project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).
6. The interest of the State for this project is in the acquisition of Federal funds for the use and benefit of the City. The State shall be the designated agent for the City. Funds expended for the project, are authorized by reason of Federal law and regulations.

NO. 29433
Filed with the Secretary of State
Filed: 11-20-07

Secretary of State


7. The work embraced in this Agreement is for new bike lanes along 63rd Avenue from Olive Avenue to Grand Avenue), hereinafter referred to as the "Project". The State shall advertise, bid and award the Project. The estimated construction costs are as follows:

TRACS No. SS59201C

*Estimated Project Costs	\$632,600.00
Federal Aid Funds @ 94.3% (capped)	\$316,300.00
City Funds @ 5.7%	\$ 19,119.00
Estimated City Funds @ 100%	<u>\$257,181.00</u>
*Total Estimated City of Glendale Funds	\$316,300.00

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction and funding. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

b. Upon approval by FHWA, and with the aid and consent of the City and the FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firms(s) for the construction of the project.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for any overage.

d. Upon execution of this Agreement, invoice the City, the City's estimated share of the Project, currently estimated at \$316,300.00. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. Upon execution of this Agreement designate the State as authorized agent for the City.

b. Upon execution, deposit funds with the State in the an amount of \$316,300.00 equal to the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid (capped) received, currently estimated at \$316,300.00.

c. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by Federal funding or not.

d. Provide for cost and, as an annual item in the City's budget, proper maintenance of the Project including all of the Project components.

e. Consent to any inspection performed by the State, provided records or audit any books in order for the State to assure itself that the monies for the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

City of Glendale
Attn: Samuel Patton
5850 West Glendale Avenue
Glendale, AZ 85301
(623) 930-3630
(623) 930-2194

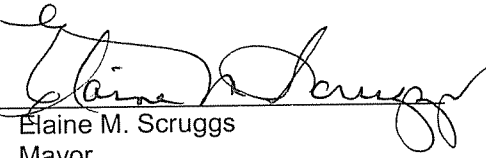
11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF GLENDALE

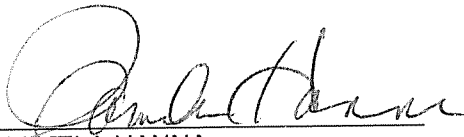
STATE OF ARIZONA

Department of Transportation

By 
Elaine M. Scruggs
Mayor

By 
DALE BUSKIRK
Transportation Planning Division

ATTEST:

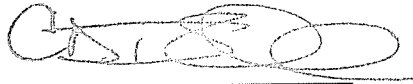
By 
PAMELA HANNA
Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF GLENDALE

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF GLENDALE, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 12 day of October, 2007.

A handwritten signature in dark ink, appearing to read "G. S. S.", is written over a horizontal line.

City Attorney

RESOLUTION NO. 4098 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF AN ON-STREET BIKE ROUTE ON 63RD AND 61ST AVENUES, FROM OLIVE TO GRAND AVENUES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

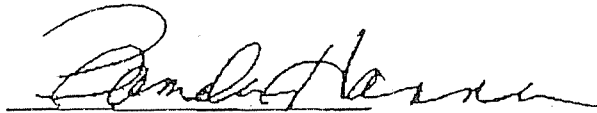
SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that an Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreements on behalf of the City of Glendale.


PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 9th day of October, 2007.


MAYOR

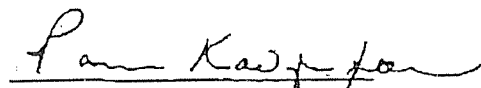
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager

RESOLUTION NO. 4098 NEW SERIES

ELAINE M. SCRUGGS
MAYOR

ATTEST:

PAMELA HANNA
City Clerk

STATE OF ARIZONA)
County of Maricopa) ss
City of Glendale)

(SEAL)

APPROVED AS TO FORM:

CRAIG TINDALL
City Attorney


I, the undersigned, Darcie McCracken, being the duly qualified Deputy City Clerk of the City of Glendale, Maricopa County, Arizona, certify that the foregoing Resolution No. 4098 New Series is a true, correct and accurate copy of Resolution No. 4098 New Series, passed and adopted at a regular meeting of the Council of Glendale, held on the 9th day of October, 2007, at which a quorum was present and voted in favor of said Resolution.

REVIEWED BY:

Given under my hand and seal this 14th day of November, 2007.

Pam Kavanaugh for
City Manager


DEPUTY CITY CLERK

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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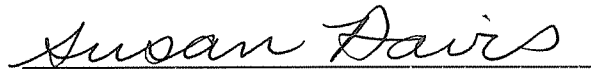
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007002601 (**JPA 07-061-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Glendale, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 7, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:89244
Attachment